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PIERS ISLAND ASSOCIATION

v.

SAANICH AND THE ISLANDS ASSESSOR

British Columbia Court of Appeal (CA760895)

Before: MR. JUSTICE M.M. McFARLANE,
MR. JUSTICE J.D. TAGGART and
MR. JUSTICE E.B. BULL

Vancouver, September 6, 1977

Mr. R.B. Hutchison, for the appellant Assessor
Mr. F.H. Herbert, for the respondent, Piers Island Association

Reasons for Judgment of Mr. Justice McFarlane (Oral)

This is an appeal by the Area Assessor for Saanich and the Islands against a decision of Mr. Justice Fulton, who on the hearing of a case stated by the Assessment Appeal Board in effect set aside the assessment of an area of land owned by the respondent, Piers Island Association.

The question at issue depends upon the interpretation and application of section 24 (w) of the *Taxation Act*, R.S.B.C. 1960, chapter 736 and amendments, to which I need not refer in any detail. The subsection reads:

> "24. The following land is exempt from taxation:
>
> (w) land and buildings owned and used exclusively by a non-profit organization for activities which are of demonstrable benefit to all members of the community in which the land is situate."

In order to understand the nature of the dispute I will cite three or four of the opening paragraphs of the case as stated, from which of course we must take the facts. Beginning with paragraph four:

> "4. Piers Island is a basically round island comprising approximately 240 acres, and lying in Satellite Channel between the northern tip of the Saanich Peninsula and Salt Spring Island. It is separated from the northern tip of the Saanich Peninsula by Colburn Channel averaging approximately 1 1/2 miles in width.
>
> "5. The perimeter of the island has been subdivided into residential lots which said lots average approximately 100 ft. of ocean frontage to a depth of 250 to 300 feet. The purchasers of such perimeter lots obtained title, duly and properly registrable in the Victoria Land Registry Office.

"6. There are approximately 125 perimeter lots and approximately 80 to 90 homes and cottages built thereon.

"7. The subject of the appeal herein is a parcel of approximately 147.3 acres comprising most of the centre or interior area of the island and known as Lot A of Plan 13049. The said Lot A is owned by the Appellant, a non-profit organization and a society duly incorporated under the *Societies Act* of the Province of British Columbia.

"8. The owners of the perimeter lots as aforesaid are the only persons entitled to become members of the Appellant (now Respondent) Society and in fact comprise the entire membership of the Society."

The question propounded by the stated case is in these words:

"Are the lands of the Appellant herein exempt from taxation pursuant to the provisions of section 24 (w) of the *Taxation Act* being chapter 376, R.S.B.C. 1960 and amendments thereto in that they consist of lands and buildings owned and used exclusively by a non-profit organization for activities which are of demonstrable benefit to all members of the community in which the land is situate."

I interpret that question in the light of the contents of the stated case as a whole as meaning that the Board has found that these lands and buildings are owned and used exclusively by a non-profit organization; and secondly, that the lands are used for activities which are of demonstrable benefit to all members of the community in which the land is situate.

On that interpretation of the stated case the question of law propounded must, it seems to me, be answered in the affirmative because on that interpretation it raises no question of law.

In view, however, of the course which the argument has taken I will express my opinion on the two aspects of the appeal which were argued by the appellant's counsel.

The first proposition as I understood him was that Mr. Justice Fulton and the Board were wrong in finding that the society is a non-profit organization within the meaning of the statutory provision which I have read. The basis of that argument, as I understood Mr. Hutchison, was that the only persons who can benefit from the activities of this organization are its members who are exclusively the owners of the land contiguous to the property in question.

In my opinion, the respondent society incorporated under the *Societies Act* is nonetheless a non-profit organization within the meaning of the section because its membership is restricted to the people who own land in the area. I deal with that strictly as a question of law assuming that it is propounded for our decision.

The second argument on behalf of the appellant was that Mr. Justice Fulton was wrong in finding that the community here consists of the area of land, namely, Piers Island, in which the respondent association and its members owned land. I think a community for the purposes of that subsection must mean an area of land inhabited or at the least used by people. Whether it can be found to be a community in fact for the purposes of the subsection must depend upon a consideration not only of the geographical location and physical characteristics of the land, but the nature of the common interests of the people in the land which they own and use.

It is clear to me that "community" within the meaning of this statutory provision must mean an area of land which must be defined in specific cases as a matter of fact, having regard to all of the circumstances of geography, ownership and use. It is clearly not intended that the benefits from the use and activities of the land should extend to all members of the community of the Province of British Columbia. The legislature must therefore have intended that in each case the area

which is to be considered a community for the purposes of the subsection would be determined substantially as a matter of fact.

I am quite unable to say, having regard to the facts stated in the stated case that there was any error in law in Mr. Justice Fulton's finding that this particular area, namely, Piers Island, is in all the circumstances a community as a matter of law within the meaning of the subsection, and that the Board was wrong in law on this aspect of the case.

I should add in my view of counsel's argument on the applicable principles of interpretation and whether this provision, being an exception, should be construed in some way different from other provisions of the statute, that in my opinion the correct guide, the rule of interpretation, is that which was stated by Mr. Justice Rowlatt in the *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* (1921) 1 K.B. 64 at 71. Without reading it all, I will quote one sentence:

> "One can only look fairly at the language used."

That is what I have endeavoured to do. I find no ambiguity or inconsistency in the language and on a fair interpretation of the language used I can find no error in Fulton, J.'s conclusion.

I would dismiss the appeal.

TAGGART, J.A. (Oral): I agree.
BULL, J. (Oral): I agree.
McFARLANE, J.A.: The appeal is dismissed.